

### REMARKS

Claims 3-5, 7-41 and 42-45 have been cancelled. Claims 1 and 42 and the claims dependent thereon have been amended to further patentably distinguish the invention from the prior art. Such cancellations of and amendments to claims are only for the purpose of expediting the prosecution of this application and are not to be construed as an abandonment of any of the novel concepts disclosed therein.

The Office Action states:

Claims 1 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Scofield (US 6,853,732 B2).

With respect to claim 1, Scofield discloses an audio system including a plurality of channels (fig.3 #54,56) intended to be radiated in a predetermined positional relationship to a listener, comprising: a listening area (fig.3 #64) comprising a plurality of listening spaces (fig.3 "spaces occupied by listeners #26"); a first directional local audio device (fig.3 #58,60) comprising at least two radiating elements radiating sound waves that destructively interfere more in some directions than the sound waves destructively interfere in other directions, the directional audio device being positioned in a first of said listening spaces (fig.3), close to a head of the listener (fig.3 #26), with a first of said radiating elements for radiating first sound waves corresponding to a first of said channels (fig.3 #58, "L-channel"); and a second nonlocal audio device (fig.3 #52), positioned inside said listening area and outside said listening spaces, distant from said first of said listening spaces (col.4 In.58-63), for radiating sound waves corresponding to said first of said channels (col.4 In.21-25). It is implied that destructive interference resultant from two separate sound sources would not be equal at all points in space, therefore the sound waves would destructively interfere more in some directions when compared to others.

With respect to claim 42, Scofield discloses an audio system including a plurality of channels (fig.3 #54,56) intended to be radiated in a predetermined positional relationship to a listener, comprising: a listening area (fig.3 #64) comprising a plurality of listening spaces (fig.3 "spaces occupied by listeners #26"); a first local audio device (fig.3 #58,60) comprising at least two radiating elements radiating sound waves that destructively interfere more in some directions than the sound waves destructively interfere in other directions, the directional audio device being positioned in a first of said listening spaces, close

to a head of the listener (fig.3 #26), with a first of said radiating elements for radiating first sound waves corresponding to a first of said channels (fig.3 #58, "L-channel"); and a second nonlocal audio device (fig.3 #52), positioned inside said listening area and outside said first of said listening spaces, distant from said first of said listening spaces (col.4 ln.58-63), for radiating sound waves corresponding to said first of said channels (col.4 ln.21-25). It is implied that destructive interference resultant from two separate sound sources would not be equal at all points in space, therefore the sound waves would destructively interfere more in some directions when compared to others. Pp. 2-4.

This ground of rejection is respectfully traversed, at least applied to the claims as amended. We rely on the authorities set forth on pages 8-10 of the response filed on 7 April 2009.

In constructing claims 1 and 42 the specification discloses the two local audio device radiating elements that radiate sound waves destructively to interfere more in some directions than the sounds waves destructively interfere in other directions near the listening space close to a head of the listener for radiating first sound waves corresponding to a first of the channels and a second nonlocal audio device positioned inside the listening area and outside the first of the listening spaces distant from the first of the listening spaces for radiating sounds waves corresponding to the first of the channels. The reference does not disclose these limitations. The reference does not disclose local and nonlocal audio devices with the nonlocal device and a radiating element of the local device radiating sound waves corresponding to the same channel. That is hardly a disclosure of local and nonlocal audio devices radiating sound waves corresponding to the same channel. In constructing the claims, the specification explains what is meant by a local and nonlocal audio device radiating sound waves corresponding to the same channel. FIG. 3C shows nonlocal device 18F and local radiating element 12LF radiating sound waves corresponding to the left front channel.

The reference does not disclose these limitations.

The Office Action identifies elements 58 and 60 in the reference as corresponding to the directional device. These elements radiate different channels; element 58 radiates R and element 60 radiates L. As amended, at least two radiating elements radiate sound waves that

destructively interfere more in some directions than the sound waves destructively interfere in other directions for radiating first sound waves corresponding to a first of the channels.

“It is well settled that anticipation under 35 U.S.C. 102 requires the presence in a single reference of all of the elements of a claimed invention.” *Ex parte Chopra*, 229 U.S.P.Q. 230, 231 (BPA&I 1985) and cases cited.

“Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983).

“This court has repeatedly stated that the defense of lack of novelty (i.e., ‘anticipation’) can only be established by a single prior art reference which discloses each and every element of the claimed invention.” *Structural Rubber Prod. Co. v. Park Rubber Co.*, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984), citing five prior Federal Circuit decisions since 1983 including *Connell*.

In a later analogous case the Court of Appeals for the Federal Circuit again applied this rule in reversing a denial of a motion for judgment n.o.v. after a jury finding that claims were anticipated. *Jamesbury Corp. v. Litton Industrial Prod., Inc.*, 225 U.S.P.Q. 253 (Fed. Cir. 1985).

After quoting from *Connell*, “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim,” 225 U.S.P.Q. at 256, the court observed that the patentee accomplished a constant tight contact in a ball valve by a lip on the seal or ring which interferes with the placement of the ball. The lip protruded into the area where the ball will be placed and was thus deflected after the ball was assembled into the valve. Because of this constant pressure, the patented valve was described as providing a particularly good seal when regulating a low pressure stream. The court quoted with approval from a 1967 Court of Claims decision adopting the opinion of then Commissioner and later Judge Donald E. Lane:

[T]he term “engaging the ball” recited in claims 7 and 8 means that the lip contacts the ball with sufficient force to provide a fluid tight seal. \*\*\* The Saunders flange or lip only sealingly engages the ball 1 on the upstream side when the fluid pressure forces the lip against the ball and never sealingly engages the ball on the downstream side because there is no fluid pressure there to force the lip against the ball. The Saunders sealing ring provides a compression type of

seal which depends upon the ball pressing into the material of the ring. \*\*\* The seal of Saunders depends primarily on the contact between the ball and the body of the sealing ring, and the flange or lip sealingly contacts the ball on the upstream side when the fluid pressure increases. 225 U.S.P.Q. at 258.

Relying on *Jamesbury*, the ITC said, "Anticipation requires looking at a reference, and comparing the disclosure of the reference with the claims of the patent in suit. A claimed device is anticipated if a single prior art reference discloses all the elements of the claimed invention as arranged in the claim." *In re Certain Floppy Disk Drives and Components Thereof*, 227 U.S.P.Q. 982, 985 (U.S. ITC 1985).

Accordingly, withdrawal of the rejection of claims 1 and 42 as anticipated by the reference is respectfully requested. If this ground of rejection is repeated, the Examiner is respectfully requested to quote verbatim the language in the reference regarded as corresponding to each limitation in claims 1 and 42.

The Office Action states:

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scofield (US 6,853,732 B2) in view of Iwahara (US 4,199,658).

With respect to claim 2, Scofield discloses an audio system in accordance with claim 1, wherein said directional audio devices comprise a plurality of acoustic drivers (fig.3 #58,60), however does not disclose expressly wherein said acoustic drivers are positioned and arranged to radiate sound waves that interfere destructively at a first predetermined location in space and to interfere nondestructively at a second predetermined location in space.

Iwahara discloses an audio system wherein a plurality of acoustic drivers (fig.1 #1-4) are positioned and arranged to radiate sound waves that interfere destructively at a first predetermined location in space and to interfere nondestructively at a second predetermined location in space (col.1 ln.37-68, col.2 ln.1-2).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the crosstalk cancellation system of Iwahara in the invention of Scofield. The motivation for doing so would have been to cancel inter-aural interferences between the right and left ears of a listener. Pp.4-5.

In *Ex parte Sternau*, 155 U.S.P.Q. 733, 735 (Bd. of Appeals 1967) the Board said:

However, there is nothing in the disclosures of [primary reference] Young and [secondary reference] Haslacher that would teach the Examiner's proposed combination or any reason for making it. In fact, the proposed combination would destroy the Young apparatus for its intended purpose. Thus, we will reverse the rejection of claims 44 and 45 for this reason.

The modification proposed by the Examiner would destroy the function of the primary reference in having one element radiate L and the other radiate R in a stereo system.

Accordingly, withdrawal of the rejection of claim 2 as unpatentable over the primary and secondary references is respectfully requested. If this ground of rejection is repeated, the Examiner is respectfully requested to quote verbatim the language in the references regarded as corresponding to each limitation in claim 2 and set forth articulated reasoning with rational underpinning to support the legal conclusion of obviousness.

The Office Action states:

Claims 6 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scofield (US 6,853,732 B2) in view of Fabry (US 7,164,773 B2).

With respect to claim 6, Scofield discloses an audio system in accordance with claim 1, however does not disclose expressly wherein said listening area comprises a vehicle passenger compartment and said listening locations comprise seating locations within said vehicle passenger compartment.

Fabry discloses an audio system to be mounted within an automobile (see figure). At the time of the invention it would have been obvious to a person of ordinary

skill in the art to use the audio system of Scofield in the automobile Fabry. The motivation for doing so would have been to provide a virtual sound system within the cabin of a vehicle so as to provide a realistic reproduced sound to a passenger.

With respect to claim 46, Scofield discloses an audio system in accordance with claim 42, however does not disclose expressly wherein said listening area comprises a vehicle passenger compartment and said listening locations comprise seating locations within said vehicle passenger compartment.

Fabry discloses an audio system to be mounted within an automobile (see figure). At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the audio system of Scofield in the automobile Fabry. The motivation for doing so would have been to provide a virtual sound system within the cabin of a vehicle so as to provide a realistic reproduced sound to a passenger.  
Pp.5-6.

This ground of rejection is respectfully traversed. It is impossible to combine the references to meet the limitations of claims 6 and 46 because we have shown above that the primary reference does not anticipate claim 1. We rely on the authorities set forth in the paragraph spanning pages 10-11 of the response filed 7 April 2009. Accordingly, withdrawal of the rejection of claims 6 and 46 as unpatentable over the primary reference in view of the secondary reference is respectfully requested. If this ground of rejection is repeated the Examiner is respectfully requested to quote verbatim the language in the references regarded as corresponding to each limitation in claims 6 and 46.

In view of the foregoing amendments and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, all the claims are submitted to be in condition for allowance and notice thereof is respectfully requested. If the Examiner believes the application is not in a condition for allowance, he is respectfully requested to telephone the undersigned attorney at 617-521-7014 to discuss what additional steps to he believes are necessary to place the application in a condition for allowance.

Please apply any other charges or credits to deposit account 06-1050, referencing order no. 02103-519002/S93 US1.

Respectfully submitted,  
FISH & RICHARDSON P.C.

10 September 2009  
Date: \_\_\_\_\_

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